

1 HOUSE BILL 1267

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Daniel R. Foley

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10 AN ACT

11 RELATING TO HEALTH CARE REFORM; REQUIRING PROCEEDS FROM THE  
12 TOBACCO SETTLEMENT PROGRAM FUND TO BE USED SOLELY FOR TOBACCO  
13 RESEARCH AND CESSATION PROGRAMS; PROVIDING FOR AN INCOME TAX  
14 DEDUCTION FOR THE PURCHASE OF LONG-TERM CARE INSURANCE;  
15 REQUIRING HIGH SCHOOL PHYSICAL EDUCATION REQUIREMENTS TO  
16 EMPHASIZE NUTRITION AND EXERCISE; REQUIRING THE ELECTRONIC  
17 SUBMISSION OF HEALTH CARE CLAIMS AND ASSOCIATED DATA; PROVIDING  
18 FOR INSURANCE RATING FACTORS FOR QUALIFIED WELLNESS PROGRAMS;  
19 RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
20 LAWS 2005.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 Section 1. Section 6-4-10 NMSA 1978 (being Laws 1999,  
24 Chapter 207, Section 2, as amended) is amended to read:

25 "6-4-10. TOBACCO SETTLEMENT PROGRAM FUND CREATED--

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1 PURPOSE.--

2 A. The "tobacco settlement program fund" is created  
3 in the state treasury and shall consist of distributions made  
4 to the fund from the tobacco settlement permanent fund. Income  
5 from investment of the tobacco settlement program fund shall be  
6 credited to the fund. Beginning in fiscal year 2002, money in  
7 the tobacco settlement program fund may be appropriated by the  
8 legislature for any of the purposes specified in Subsection B  
9 of this section and after receiving the recommendations of the  
10 tobacco settlement revenue oversight committee. Balances in  
11 the tobacco settlement program fund at the end of any fiscal  
12 year shall remain in the fund.

13 B. Money may be appropriated from the tobacco  
14 settlement program fund for ~~[health and educational purposes,~~  
15 ~~including:~~

16 ~~(1) support of additional public school~~  
17 ~~programs, including extracurricular and after-school programs~~  
18 ~~designed to involve students in athletic, academic, musical,~~  
19 ~~cultural, civic, mentoring and similar types of activities;~~

20 ~~(2) any health or health care program or~~  
21 ~~service for prevention or treatment of disease or illness;~~

22 ~~(3)]~~ basic and applied research conducted by  
23 higher educational institutions or state agencies addressing  
24 the impact of smoking ~~[or other behavior]~~ on health and disease

25 ~~[(4) public health programs and needs]~~ and for

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1                    [~~5~~] tobacco use cessation and prevention  
2 programs, including statewide public information, education and  
3 media campaigns."

4            Section 2. A new section of the Income Tax Act is enacted  
5 to read:

6            "[NEW MATERIAL] DEDUCTION--UNREIMBURSED OR UNCOMPENSATED  
7 MEDICAL CARE EXPENSES.--

8            A. A taxpayer may claim a deduction from net income  
9 in an amount equal to the premiums for a long-term care  
10 insurance contract paid by the taxpayer during the taxable year  
11 if the premiums have not been included in the taxpayer's  
12 itemized deductions, as defined in Section 63 of the Internal  
13 Revenue Code, for the taxable year.

14            B. As used in this section, "long-term care  
15 insurance contract" means a qualified long-term care insurance  
16 contract as defined in Section 7702B(b) of the Internal Revenue  
17 Code.

18            C. A husband and wife who file separate returns for  
19 a taxable year in which they could have filed a joint return  
20 may each claim only one-half of the deduction pursuant to this  
21 section that would have been allowed on a joint return.

22            D. The provisions of this act apply to taxable  
23 years beginning on or after January 1, 2008."

24            Section 3. Section 22-13-1.1 NMSA 1978 (being Laws 1986,  
25 Chapter 33, Section 5, as amended by Laws 2005, Chapter 314,

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1 Section 1 and by Laws 2005, Chapter 315, Section 10) is amended  
2 to read:

3 "22-13-1.1. GRADUATION REQUIREMENTS.--

4 A. At the end of grades eight through eleven, each  
5 student shall prepare an interim next-step plan that sets forth  
6 the coursework for the grades remaining until high school  
7 graduation. Each year's plan shall explain any differences  
8 from previous interim next-step plans, shall be filed with the  
9 principal of the student's high school and shall be signed by  
10 the student, the student's parent and the student's guidance  
11 counselor or other school official charged with coursework  
12 planning for the student.

13 B. Each student must complete a final next-step  
14 plan during the senior year and prior to graduation. The plan  
15 shall be filed with the principal of the student's high school  
16 and shall be signed by the student, the student's parent and  
17 the student's guidance counselor or other school official  
18 charged with coursework planning for the student.

19 C. An individualized education program that meets  
20 the requirements of Subsections A and B of this section and  
21 that meets all applicable transition and procedural  
22 requirements of the federal Individuals with Disabilities  
23 Education Act for a student with a disability shall satisfy the  
24 next-step plan requirements of this section for that student.

25 D. A local school board shall ensure that each high

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1 school student has the opportunity to develop a next-step plan  
2 and is reasonably informed about:

- 3 (1) curricular and course options;
- 4 (2) opportunities available that lead to  
5 different post-high-school options; and
- 6 (3) alternative opportunities available if the  
7 student does not finish a planned curriculum.

8 E. The secretary shall:

9 (1) establish specific accountability  
10 standards for administrators, counselors, teachers and school  
11 district staff to ensure that every student has the opportunity  
12 to develop a next-step plan;

13 (2) promulgate rules for accredited private  
14 schools in order to ensure substantial compliance with the  
15 provisions of this section;

16 (3) monitor compliance with the requirements  
17 of this section; and

18 (4) compile such information as is necessary  
19 to evaluate the success of next-step plans and report annually,  
20 by December 15, to the legislative education study committee  
21 and the governor.

22 F. Successful completion of a minimum of twenty-  
23 three units aligned to the state academic content and  
24 performance standards shall be required for graduation. These  
25 units shall be as follows:

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1 (1) four units in English, with major emphasis  
2 on grammar and literature;

3 (2) three units in mathematics, at least one  
4 of which is equivalent to the algebra 1 level or higher;

5 (3) two units in science, one of which shall  
6 have a laboratory component; provided, however, that with  
7 students entering the ninth grade beginning in the 2005-2006  
8 school year, three units in science shall be required, one of  
9 which shall have a laboratory component;

10 (4) three units in social science, which shall  
11 include United States history and geography, world history and  
12 geography and government and economics;

13 (5) one unit in physical education, with a  
14 major emphasis on the long-range benefits of proper nutrition  
15 and exercise;

16 (6) one unit in communication skills or  
17 business education, with a major emphasis on writing and  
18 speaking and that may include a language other than English;

19 (7) one-half unit in New Mexico history for  
20 students entering the ninth grade beginning in the 2005-2006  
21 school year; and

22 (8) nine elective units and seven and one-half  
23 elective units for students entering the ninth grade in the  
24 2005-2006 school year that meet department content and  
25 performance standards. Student service learning shall be

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1 offered as an elective.

2 G. The department shall establish a procedure for  
3 students to be awarded credit through completion of specified  
4 career technical education courses for certain graduation  
5 requirements.

6 H. Final examinations shall be administered to all  
7 students in all classes offered for credit.

8 I. A student [~~shall not receive a high school~~  
9 ~~diploma~~] who has not passed a state graduation examination in  
10 the subject areas of reading, English, mathematics, writing,  
11 science and social science shall not receive a high school  
12 diploma. The state graduation examination on social science  
13 shall include a section on the constitution of the United  
14 States and the constitution of New Mexico. If a student exits  
15 from the school system at the end of grade twelve without  
16 having passed a state graduation examination, the student shall  
17 receive an appropriate state certificate indicating the number  
18 of credits earned and the grade completed. If within five  
19 years after a student exits from the school system the student  
20 takes and passes the state graduation examination, the student  
21 may receive a high school diploma.

22 J. As used in this section:

23 (1) "final next-step plan" means a next-step  
24 plan that shows that the student has committed or intends to  
25 commit in the near future to a four-year college or university,

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1 a two-year college, a trade or vocational program, an  
2 internship or apprenticeship, military service or a job;

3 (2) "interim next-step plan" means an annual  
4 next-step plan in which the student specifies post-high-school  
5 goals and sets forth the coursework that will allow the student  
6 to achieve those goals; and

7 (3) "next-step plan" means an annual personal  
8 written plan of studies developed by a student in a public  
9 school or other state-supported school or institution in  
10 consultation with the student's parent and school counselor or  
11 other school official charged with coursework planning for the  
12 student.

13 K. The secretary may establish a policy to provide  
14 for administrative interpretations to clarify curricular and  
15 testing provisions of the Public School Code."

16 Section 4. A new section of Chapter 59A, Article 2 NMSA  
17 1978 is enacted to read:

18 "[NEW MATERIAL] ELECTRONIC SUBMISSION OF CLAIMS AND  
19 ASSOCIATED DATA.--The superintendent, in consultation with the  
20 New Mexico health policy commission and pursuant to the Health  
21 Information System Act, shall adopt and promulgate rules by  
22 January 1, 2009 to require health insurers, health maintenance  
23 organizations, other health coverage payers, third-party  
24 administrators and individual and institutional health care  
25 providers to transmit electronically all claims, referrals,

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1 medical records, appeals, eligibility information, inquiries,  
2 reimbursements and other data and information associated with  
3 the submission, processing and payment of health care claims.  
4 The superintendent shall seek ways to establish loans, grants  
5 and other public or private funding to facilitate  
6 implementation of this requirement. Electronic transmission of  
7 information pursuant to this section shall comply with the  
8 electronic code standards and the privacy and confidentiality  
9 standards of the federal Health Insurance Portability and  
10 Accountability Act of 1996."

11 Section 5. Section 59A-18-13.1 NMSA 1978 (being Laws  
12 1994, Chapter 75, Section 26, as amended) is amended to read:

13 "59A-18-13.1. ADJUSTED COMMUNITY RATING.--

14 A. Every insurer, fraternal benefit society, health  
15 maintenance organization or nonprofit health care plan that  
16 provides primary health insurance or health care coverage  
17 insuring or covering major medical expenses shall, in  
18 determining the initial year's premium charged for an  
19 individual, use only the rating factors of age, gender,  
20 geographic area of the place of employment and smoking  
21 practices, except that for individual policies the rating  
22 factor of the individual's place of residence may be used  
23 instead of the geographic area of the individual's place of  
24 employment.

25 B. In determining the initial and any subsequent

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1 year's rate, the difference in rates in any one age group that  
2 may be charged on the basis of a person's gender shall not  
3 exceed another person's rates in the age group by more than  
4 twenty percent of the lower rate, and no person's rate shall  
5 exceed the rate of any other person with similar family  
6 composition by more than two hundred fifty percent of the lower  
7 rate, except that the rates for children under the age of  
8 nineteen or children aged nineteen to twenty-five who are full-  
9 time students may be lower than the bottom rates in the two  
10 hundred fifty percent band. The rating factor restrictions  
11 shall not prohibit an insurer, fraternal benefit society,  
12 health maintenance organization or nonprofit health care plan  
13 from offering rates that differ depending upon family  
14 composition.

15 C. An insurer, fraternal benefit society, health  
16 maintenance organization or nonprofit health care plan that  
17 provides a qualified wellness program may use a rating factor  
18 that reflects the expected level of participation in the  
19 program and the anticipated effect the program will have on  
20 utilization or medical claim costs. A qualified wellness  
21 program shall:

22 (1) meet the requirements of the federal  
23 Health Insurance Portability and Accountability Act of 1996 for  
24 bona fide wellness programs;

25 (2) provide financial incentives to covered

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1 employees or individuals for participating in the program; and  
2 (3) provide to covered employees or  
3 individuals for whom it is unreasonably difficult to satisfy  
4 the program's applicable standards reasonable alternative  
5 methods for achieving program participation.

6 D. The methodology proposed by the insurer,  
7 fraternal benefit society, health maintenance organization or  
8 nonprofit health care plan for establishing rating factors for  
9 a qualified wellness program may take into consideration:

10 (1) the anticipated average percentage of  
11 employees or individuals eligible to participate in the  
12 program;

13 (2) the anticipated efficacy of the financial  
14 incentives in producing high levels of program participation;

15 (3) the level of program participation  
16 achieved in prior coverage periods;

17 (4) the expected success rate for program  
18 participants;

19 (5) clinical studies; and

20 (6) the insurer's experience in the use of the  
21 program.

22 ~~[C.]~~ E. The provisions of this section do not  
23 preclude an insurer, fraternal benefit society, health  
24 maintenance organization or nonprofit health care plan from  
25 using health status or occupational or industry classification

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1 in establishing:

2 (1) rates for individual policies; or

3 (2) the amount an employer may be charged for  
4 coverage under the group health plan.

5 ~~[D.]~~ F. As used in Subsection ~~[G]~~ E of this  
6 section, "health status" does not include genetic information.

7 ~~[E.]~~ G. The superintendent shall adopt  
8 ~~[regulations]~~ rules to implement the provisions of this  
9 section."

10 Section 6. Section 59A-23B-6 NMSA 1978 (being Laws 1991,  
11 Chapter 111, Section 6, as amended) is amended to read:

12 "59A-23B-6. FORMS AND RATES--APPROVAL OF THE  
13 SUPERINTENDENT--ADJUSTED COMMUNITY RATING.--

14 A. All policy or plan forms, including  
15 applications, enrollment forms, policies, plans, certificates,  
16 evidences of coverage, riders, amendments, endorsements and  
17 disclosure forms, shall be submitted to the superintendent for  
18 approval prior to use.

19 B. No policy or plan may be issued in the state  
20 unless the rates have first been filed with and approved by the  
21 superintendent. This subsection shall not apply to policies or  
22 plans subject to the Small Group Rate and Renewability Act.

23 C. In determining the initial year's premium or  
24 rate charged for coverage under a policy or plan, the only  
25 rating factors that may be used are age, gender, geographic

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1 area of the place of employment and smoking practices, except  
2 that for individual policies the rating factor of the  
3 individual's place of residence may be used instead of the  
4 geographic area of the individual's place of employment. In  
5 determining the initial and any subsequent year's rate, the  
6 difference in rates in any one age group that may be charged on  
7 the basis of a person's gender shall not exceed another  
8 person's rate in the age group by more than twenty percent of  
9 the lower rate, and no person's rate shall exceed the rate of  
10 any other person with similar family composition by more than  
11 two hundred fifty percent of the lower rate, except that the  
12 rates for children under the age of nineteen or children aged  
13 nineteen to twenty-five who are full-time students may be lower  
14 than the bottom rates in the two hundred fifty percent band.  
15 The rating factor restrictions shall not prohibit an insurer,  
16 fraternal benefit society, health maintenance organization or  
17 nonprofit healthcare plan from offering rates that differ  
18 depending upon family composition.

19 D. An insurer, fraternal benefit society, health  
20 maintenance organization or nonprofit healthcare plan that  
21 provides a qualified wellness program may use a rating factor  
22 that reflects the expected level of participation in the  
23 program and the anticipated effect the program will have on  
24 utilization or medical claim costs. A qualified wellness  
25 program shall:

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1                   (1) meet the requirements of the federal  
2 Health Insurance Portability and Accountability Act of 1996 for  
3 bona fide wellness programs;

4                   (2) provide financial incentives to covered  
5 employees or individuals for participating in the program; and

6                   (3) provide to covered employees or  
7 individuals for whom it is unreasonably difficult to satisfy  
8 the program's applicable standards reasonable alternative  
9 methods for achieving program participation.

10                   E. The methodology proposed by the insurer,  
11 fraternal benefit society, health maintenance organization or  
12 nonprofit healthcare plan for establishing rating factors for a  
13 qualified wellness program may take into consideration:

14                   (1) the anticipated average percentage of  
15 employees or individuals eligible to participate in the  
16 program;

17                   (2) the anticipated efficacy of the financial  
18 incentives in producing high levels of program participation;

19                   (3) the level of program participation  
20 achieved in prior coverage periods;

21                   (4) the expected success rate for program  
22 participants;

23                   (5) clinical studies; and

24                   (6) the insurer's experience in the use of the  
25 program.

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1           ~~[D-]~~ F. The provisions of this section do not  
2 preclude an insurer, fraternal benefit society, health  
3 maintenance organization or nonprofit healthcare plan from  
4 using health status or occupational or industry classification  
5 in establishing:

- 6                           (1) rates for individual policies; or  
7                           (2) the amount an employer may be charged for  
8 coverage under a group health plan.

9           ~~[E-]~~ G. As used in Subsection ~~[D]~~ F of this  
10 section, "health status" does not include genetic information.

11           ~~[F-]~~ H. The superintendent shall adopt  
12 ~~[regulations]~~ rules to implement the provisions of this  
13 section."

14           Section 7. Section 59A-23C-5.1 NMSA 1978 (being Laws  
15 1994, Chapter 75, Section 33, as amended) is amended to read:

16           "59A-23C-5.1. ADJUSTED COMMUNITY RATING.--

17                   A. A health benefit plan that is offered by a  
18 carrier to a small employer shall be offered without regard to  
19 the health status of any individual in the group, except as  
20 provided in the Small Group Rate and Renewability Act. The  
21 only rating factors that may be used to determine the initial  
22 year's premium charged a group, subject to the maximum rate  
23 variation provided in this section for all rating factors, are  
24 the group members':

- 25                           (1) ages;

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- (2) genders;
- (3) geographic areas of the place of employment; or
- (4) smoking practices.

B. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rate in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit a carrier from offering rates that differ depending upon family composition.

C. A carrier that provides a qualified wellness program may use a rating factor that reflects the expected level of participation in the program and the anticipated effect the program will have on utilization or medical claim costs. A qualified wellness program shall:

- (1) meet the requirements of the federal Health Insurance Portability and Accountability Act of 1996 for bona fide wellness programs;

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1                   (2) provide financial incentives to covered  
2 employees or individuals for participating in the program; and

3                   (3) provide to covered employees or  
4 individuals for whom it is unreasonably difficult to satisfy  
5 the program's applicable standards reasonable alternative  
6 methods for achieving program participation.

7                   D. The methodology proposed by the carrier for  
8 establishing rating factors for a qualified wellness program  
9 may take into consideration:

10                   (1) the anticipated average percentage of  
11 employees or individuals eligible to participate in the  
12 program;

13                   (2) the anticipated efficacy of the financial  
14 incentives in producing high levels of program participation;

15                   (3) the level of program participation  
16 achieved in prior coverage periods;

17                   (4) the expected success rate for program  
18 participants;

19                   (5) clinical studies; and

20                   (6) the insurer's experience in the use of the  
21 program.

22                   ~~[C.]~~ E. The provisions of this section do not  
23 preclude a carrier from using health status or occupational or  
24 industry classification in establishing the amount an employer  
25 may be charged for coverage under a group health plan.

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[D-] F. As used in Subsection [G] E of this section, "health status" does not include genetic information.

[E-] G. The superintendent shall adopt [~~regulations~~] rules to implement the provisions of this section."